

BEFORE THE
POSTAL REGULATORY COMMISSION

Periodic Reporting (Proposal Five)

:
:
:

Docket No. RM2018-8

**UNITED PARCEL SERVICE, INC.'S SECOND MOTION
REQUESTING ACCESS TO NON-PUBLIC MATERIALS
UNDER PROTECTIVE CONDITIONS
(July 31, 2018)**

United Parcel Service, Inc. ("UPS") respectfully submits this motion pursuant to 39 C.F.R. § 3001.21 and 39 C.F.R. § 3007.40 requesting that the Commission grant its qualified representatives¹ access to non-public library references from Docket No. RM2018-8 (USPS-RM2018-8/NP3) ("NP3"), which the United States Postal Service ("Postal Service") filed with the Postal Regulatory Commission ("Commission") on July 27, 2018 in support of Proposal Five. The Postal Service has "no objection" to the Commission granting UPS's qualified representatives access to NP3. United States Postal Service Response to United Parcel Service Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions at 1-2, 5, Dkt. No. RM2018-8 (July 27, 2018) ("Postal Service's July 27, 2018 Opposition").

UPS moved for access to USPS-RM2018-8/NP1 ("NP1") on July 20, 2018 on the basis that meaningful participation in this docket will not be possible without the data underlying the Postal Service's proposal. United Parcel Service, Inc.'s Motion

¹ UPS's outside counsel and consultants are identified in Exhibit A, each has executed a certification of compliance with protective conditions in this docket. These certifications are annexed to Exhibit B, UPS's Protective Conditions Statement.

Requesting Access To Non-Public Materials Under Protective Conditions at 2, Dkt. No. RM2018-8 (July 20, 2018) (“UPS’s July 20, 2018 Motion”). The Postal Service opposed UPS’s motion for access on July 27, 2018, arguing that access to NP1 could harm the Postal Service, the Postal Service’s business relationships, and the Postal Service’s third party business partners. Postal Service’s July 27, 2018 Opposition at 1.

Contemporaneous with its July 27, 2018 Opposition, the Postal Service filed NP3 “in response to the UPS request of July 20 to access the materials in” NP1. Notice of Filing of USPS-RM2018-8/NP3 and Application for Nonpublic Treatment at 2, Dkt. No. RM2018-8 (July 27, 2018). The Postal Service represented that NP3 contains “no new material . . . relative to” NP1, but merely omits “third party and other sensitive data” in order to resolve the Postal Service’s objections to UPS’s access to NP1. *Id.* The Postal Service “encourage[d] UPS to seek access to [NP3] . . . and if upon review that material is deemed sufficient, to withdraw [UPS’s] motion for access to [NP1].” *Id.* The Postal Service “has no objection to the Commission granting access [by UPS’s representatives] under the standard protective conditions” to NP3. Postal Service’s July 27, 2018 Opposition at 1-2, 5.

In determining whether to grant access to non-public data, the Commission “shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).” See 39 C.F.R. § 3007.42 (current regulation); see *also* 39 C.F.R. § 3007.301 (pending regulation, with similar language). For the reasons already enumerated in UPS’s July 20, 2018 Motion, UPS’s representatives should be granted access to NP3. See July 20, 2018 Motion at 2-3. Meaningful participation in this docket will only be possible with access to the data underlying the Postal Service’s proposal. Given that the Postal

Service has no objection to granting UPS's representatives access to NP3, UPS will not reiterate its arguments at length.

UPS respectfully requests that this motion be granted.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS

Exhibit A

1. Steig Olson
2. Christopher Seck
3. David LeRay
4. Andrew Sutton
5. Kat Lanigan
6. D'Andrea Green
7. Kevin Neels
8. Nicholas Powers
9. Angela Lam
10. Nathan Basch
11. Edward Cho
12. Ezra Frankel
13. Jill Moraski
14. Clyde Findley Bowie III

Exhibit B
Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as RM2018-8/NP3 (hereinafter “these materials”) in Commission Docket No. RM2018-8.

UPS (hereinafter “the movant”) requests access to these materials related to filing its comments in the RM2018-8 docket.

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3007 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission. The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3007.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.
2. In accordance with 39 CFR 3007.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the

competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3007.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(b) and (c), all persons granted access to these materials:

- a. must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3007.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3007.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

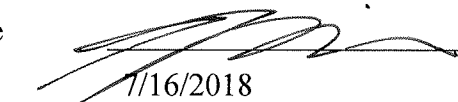
Attorney for UPS

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. RM2018-8 by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Commission Docket No. RM2018-8.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.


Name	<u>Steig Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>7/16/2018</u>

CERTIFICATION

The undersigned represents that:

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Name	<u>Christopher Seck</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>July 16, 2018</u>

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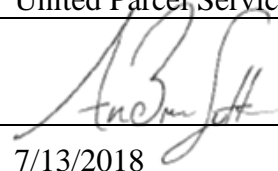
Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>07-16-2018</u>

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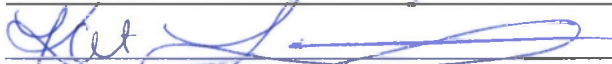
Name	<u>Andrew Sutton</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>7/13/2018</u>

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Name	<u>Kathleen Lanigan</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>4/16/2018</u>

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Name	<u>D'Andrea J. Green</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Paralegal</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>July 07, 2018</u>

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Name	<u>Hevin Neels</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Hevin Neels</u>
Date	<u>July 13, 2018</u>

CERTIFICATION

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Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u>NE Powers</u>
Date	<u>July 16, 2018</u>

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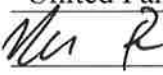
Name	<u>Angela Lam</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>ILB [Signature]</u>
Date	<u>7/13/18</u>

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Name	<u>Nathan Basch</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>7/16/18</u>

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Name	<u>Edward Cho</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u> Cho</u>
Date	<u>July 16, 2018</u>

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Name	<u>Ezra Frankel</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Ezra Frankel</u>
Date	<u>July 13, 2018</u>

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Name	<u>Jill Moraski</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>07/16/2018</u>

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Name	<u>Clyde Findley Bowie III</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>C. Findley Bowie III</u>
Date	<u>07/19/2018</u>